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No. 07-1020

Supreme Court, U.S.
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In The

Supreme Court Of The United States

Christopher A Graham

Petitioner.

-against-

AT&T Mobility, LLC,

Respondent.

BRIEF IN REPLY TO OPPOSITION

Petition for Writ of Certiorari
To the United States Court of Appeals
For the Seventh Circuit

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E. REPLY TO COUNTER STATEMENT

Petitioner (Graham) has presented again, again and again in numerous forms of physical evidence to respondent which showed a racially hostile and discriminatory work environment where he was treated differently from similarly situated white employees by his managers and his director Timothy Kaufenberg.

The evidence in support of petitioner's discrimination and retaliation claims are clear. There are numerous contradictions in the testimonies of AT&T's agents like John Coffey and Timothy Kaufenberg, petitioner's managers, the truth have been presented to this court in petitioner's Petition for Writ of Certiorari. There are numerous disputed issues relevant for a jury trial.

The reality of petitioner's hostile experiences at the hands of his employer (AT&T) is vastly different from what the respondent would lead this court to believe. Petitioner does not have the time and resources to properly respond to the made up arguments of respondent who in pretext has continually tried to explain away factual discriminatory acts against him, while the discrimination against him continues.

FACTUAL BACKGROUNDS OF THE CASE

Petitioner can only respond and convey to this court what he knows to be true. Arguments presented by respondent in opposition to petitioner's brief is pretext and are being used to escape liability for AT&T.

Respondent is attempting to cover up a continued racially hostile work environment for black workers like Graham. Respondent has not showed any legitimate reasons for the discriminatory, retaliatory and hostile acts against petitioner.

Respondent has presented no evidence anywhere in discovery or in the record that any similarly situated white employees were treated the same as Graham, as suggested on page 4 of respondent's brief in opposition, The only evidence presented by respondent is the self serving affidavits of some of its white employees. The evidence in the record show that Graham was treated less favorably[3].

[3]**As discovery required, Petitioner asked and requested that the reviews of all similarly situated white employees in his work group be released as proof that the type of feedback in his evaluation was not consistent with those of his white coworkers, and was in fact less favorable than whites and based on retaliation and discrimination. AT&T refused to release those appraisal records in violation of discovery rules.**

It is a fact that the only evidence in the record that respondent made available in discovery was the list of scores that showed Graham last on the list proving that Graham was treated less favorably.

From 1993 to the present Graham's work ethics at AT&T has been exceptional, as supported by his 2001 appraisal and those before. Petitioner has a high moral and ethical standard which he credits to his religious beliefs and his commitment to his family and his church, his ethical work habits is continuously recognized by those outside his department. Petitioner prides himself in his work.

DISCRIMINATORY INTENT

Evidence that the review document given by John Coffey AT&T document marked **D00533** also Graham's document marked **EXHIBIT-R1-3, (App. 353)** was retaliatory is John Coffey being sent an email from David Giesfeldt, a Terr III engineer, commending Graham's work and Coffey purposely withholding the email for 22 days and did not give it to Graham. Petitioner then found out about the positive email from Giesfeldt and Jeff Bartos, witnesses in this case, petitioner had to request the email from his manager Coffey. Furthermore on page 2 section 2 of the same document, **(App. 353)** Coffey writes "Chris needs to put forth more effort in building a better working relationship, and creating better communication between team members and management." In the Coach and Development section of Graham's 2002 review marked **APP. 249** exhibit **D00540**

states "Increased communication between Chris and myself and his peers is needed to contribute towards a more cohesive team environment. Chris is knowledgeable in a variety of different network areas and I would like to see him share that knowledge with his team members who may be new to a task." Kaufenberg and Coffey referred to this section when they told Graham to send daily emails.

It is well known at AT&T that good communication skills are a prerequisite for any potential employee and or present employee to advance. The appraisal permanently damaged petitioner's work history. If the appraisal was the only evidence presented, and occurred after plaintiff opposed discrimination (EEOC complaint) taken in its proper context by itself, it is enough for trial.

A recorded conversation with Larry Barrett a white similarly situated employee, in which Barrett admitted that he, unlike Graham, was not asked by his manager John Coffey to send daily emails reporting his daily work. Barrett admitted that his manager did not know what he did in the field unlike Graham who was told by the same manager John Coffey to send daily emails as to his daily work and to improve communication. This contradicts statements made on page 4 of respondent's brief of opposition.

AT&T treated white employees differently than Graham, the evidence shows that. This is an issue of dispute to be resolved by a jury. See Barrett's deposition or in Graham's affidavit in opposition to motion **(App. 208)**.

AT&T investigates itself, its ethics line is also investigated internally. Respondent didn't resolve any of the reported incidents the hostility is continuing as stated in petitioner's EEOC complaint form. No evidence in the record show that Cingular took any specific acts that constitute a prompt investigation prior to Graham filing his EEOC charges for this action. Cingular only made a self serving claim that it made findings in investigations, which was send to Graham while depositions were being conducted in this action.

White employees Larry Barrett and Russell Jender that saw the Kill the Nigger sign who were identified by the petitioner (Graham) to Cory Balonanski HR manager, was not punished or reprimanded for leaving the sign on Graham's secured cell site C033 instead Balonanski told Graham that that white employees were offended that he had reported the sign. This pattern of treatment by Barrett was typical of the department's hostility

In discovery to prove pattern and practice, Graham requested the log book that chronicled the technician's visits at site C033, respondent refused to produce the book and the district court took no action to force AT&T to comply with discovery rules.

Hostility against blacks were brought to the attention of respondent many times in an attempt to have respondent address and put a stop to a racially hostile environment, based on the provisions in its own stated Code of Business Conduct (COBC). Because petitioner opposed these acts of racial discrimination he became victim retaliation, continued discrimination and a racially hostile work environment.

None of the facts that petitioner (Graham) presented in this case were disputed by AT&T as not true instead respondent (AT&T) attempted to self define all the factual discriminatory and hostile acts as petty slights and annoyances. If respondent had maintained a nondiscriminatory (COBC) policy, petitioner would not have had any claims to present to the courts thru out his years of employment. There should not have been a hint of a racially hostility and or questionable acts of discrimination of any kind in respondent's work force, if it actually maintained a COBC and EEO policy.

DIFFERENT STANDARD IN TREATMENT

The victim (petitioner) has conveyed the existence of a hostile, retaliatory and discriminatory work environment based on his own experiences and the experiences of his black co-workers. Respondent's careless acts have caused petitioner serious harms physically, financially and emotionally because the discriminatory acts continues. Petitioner was and is treated differently from his similarly situated coworkers who are white.

The deposition testimony of John Coffey on December 20, 2005 "contradicts" the subsequent self-serving affidavit by Coffey or management. Also on Cingular's document marked **D00533,** which is also Graham's document marked **EXHIBIT-R1-3, (App. 353)** page 2 section 2, Coffey writes "Chris needs to put forth more effort in building a better working relationship, and creating better communication between team members and management."

Respondent's past reviews of Graham show that he was commended for his excellent communications skills, after his EEOC charge and complaints to management of continued hostile work environment, discrimination and retaliation his manager retaliated against him by giving him a derogatory review, this retaliation consisted of receiving a derogatory review from his manager, John Coffey, on May 2, 2003 **(APP. 248 and APP. 354 and April 7, 2004; (APP. 342)** management, his supervisor John Coffey and the Director Timothy Kaufenberg, gave Graham a demanded directive that petitioner send emails daily throughout the day, the directive was not required from other similarly situated white employees like Larry Barrett, and others. Management tolerated a pattern of hostile of acts against Graham.

Furthermore the evaluation given to petitioner was negative when compared to white employees' evaluation and this is based on the rating scale provided by defendants. **Exhibit 7**. Plaintiff did see a review rating of his coworkers: **Exhibit 7**. This exhibit shows a review rating of plaintiff's coworkers and plaintiff has the lowest rating.

In contrast petitioner's evaluation for 2001 show that petitioner was at the top of the rating with a rating of 4 out of a possible 5.

Petitioner "was reprimanded and disciplined verbally" in meetings about his 2002 and 2003 derogatory reviews by Timothy Kaufenberg and John Coffey his managers, after he had complained to respondent about discrimination, hostility and retaliation.

ISSUES OF FACTS

Petitioner (Graham) was disciplined in his 2002-2003 and 2003-2004 evaluations. Within these evaluations plaintiff was reprimanded for his conduct where management falsely accused him of deficiencies and demanded a change in his work performance. In petitioner's previous evaluation for 2001 he was highly rated a 4 out of a possible 5 in all areas for his excellent work performance.

Pattern and practice of discrimination
Contradictions in testimony
Timothy Kaufenberg petitioner's director although testified otherwise, does get involved in issues involving his subordinates. The May 2, 2003 and April 7, 2004 meetings with plaintiff's supervisor John Coffey and the plaintiff. **Exhibit 1a & 1b, and Exhibit 2, and Exhibit 3** show Mr. Kaufenberg responding to John Keemha's e-mail who is a white subordinate similarly to Graham. Another example of Mr. Kaufenberg getting involved with subordinates is his 1998 meeting with petitioner (Graham). At that meeting plaintiff complained about discrimination in the company's promotion policy based

on his race. In the first meeting with Mr. Kaufenberg he said he did not believe there was discrimination in his department. At a second meeting, Mr. Kaufenberg responded to plaintiff by saying "there might be discrimination in this Company, but not in my Department." Petitioner then said something must be done before this Company gets sued. Thereafter plaintiff attended a Microsoft Outlook class with Mr. Kaufenberg where he repeated his statement that "there might be discrimination in this Company, but not in my Department." This pattern of treatment continued on with the same director into the period of this lawsuit.

It was well known and general knowledge in the Department where Graham worked that he had had filed an EEOC complaint. Corey Bolanowski violated respondent's stated policy of confidentiality when she mentioned it to plaintiff's supervisor, John Coffey, see plaintiff's affidavit Exhibit R6-2, regarding the September 24, 2003 meeting. Cory admitted in her deposition that she did mention the EEOC complaint and lawsuit to plaintiff's supervisor John Coffey. In his deposition Mike Morrissey also admitted hearing about it Moreover, see plaintiff's affidavit, page 27, where co-worker Robert Flores spoke to him about his EEOC charges and lawsuit in December, 2002. Respondent now attempts to convey to this court that no one knew about petitioners EEOC complaints.

This case is not about isolated incidents of harmless acts or petty annoyances. Morrissey knew about Graham's EEOC complaint and knew where the cell site was headed when he placed the **"Built by Irish Crew"** label on the site. Graham knows Morrisey knew the location where the site was going, because Graham worked in the same capacity as Morriesy as an installer and trained Morrisey who was promoted before Graham. Site locations were determined before they were built; Morrisey knew this and was also responsible for drawing up the geographical site maps for all the technicians.

The removal of the label days after it was reported does not nullify the hostile and retaliatory act of Morrisey. Other examples of past documented acts that give rise to present claims was a graffiti sign painted by someone with access to secured company property that states **"Kill The Nigger"** is not a petty slight or an annoyance.

Respondent AT&T state in its (COBC) Code of Business Conduct that any acts of discrimination, hostility, retaliation or unethical behavior would be seriously dealt with, including and up to dismissal. Petitioner has filed numerous complaints with the EEOC only after addressing the violations to his employer who refused to properly address any of the violations and punish those responsible. Petitioner sued after exhausting his administrative options, he sought relief in the courts with other black employees. The courts have so far refused to send any of the cases to a jury all of petitioner's legitimate lawsuits were dismissed on technicalities and none of the merits were considered.

On petitioner's original claims the EEOC issued a right to sue letter but petitioner had no knowledge of the letter. A law firm Leeds Morelli and Brown requested the letter and illegally held it and allowed it to expire. LMB illegally negotiated with AT&T for a settlement threatening them with a class action suit, LMB walked away from case without filing the lawsuit leaving this petitioner and 50 employees/plaintiffs claims forever barred,

AT&T continued its discriminatory treatment, petitioner filed another EEOC claim which was brought before the Honorable Charles R Norgle, case # **04 C 0540** Norgle dismissed the case at a status hearing and violated *Circuit Rule 50* Norgle did not give a reason for dismissing the claims neither orally or in writing. AT&T then known as Cingular was never terminated and no where in the record Exhibit B does it show when Cingular Wireless was ever terminated.

LACK OF AN EQUAL OPORTUNITY POLICY AND A DIFFERENT STANDARD OF APPLICATION

A report named SCENDIS shows a lack of equal opportunity policy. Petitioner and 12 other black employees from different departments were interview by a group contracted by respondent to conduct interviews regarding working conditions and race. All the black workers including petitioner testified that AT&T then known as Cingular was racist. Petitioner and Dennis Moore a witness in this case requested the un-redacted version of the SCENDIS report in deposition, it was denied, the report shows that AT&T does not maintain an

EEO policy but rather maintains a workplace of hostility against blacks. An EEO statement on paper does not insure that those employees and or agents of respondent will obey it. There is no enforcement of the policy in field department where Graham works where it is racially hostile for blacks.

AT&T does not reprimand white managers and employees Code of Business Conduct (COBC) violations in petitioners department, while black employees are punish harshly for minor infractions, which leads to a racially hostile environment for blacks. Respondent's stated EEO policy is useless for those who it should protect.

Numerous disputed issues in the **Local Rule 56.1(b)(3) In Response to Defendant's Statement of Undisputed Facts** were dismissed because the lower court rejected the discrimination charges based on a error committed by the EEOC intake who did not check the race discrimination box limiting the scope and submission of evidence by petitioner to support his case. The EEOC itself do not subscribe to the lower courts decision the EEOC holds that the discrimination charges are viable since the charges were well spelled out in the particulars are section of the charge complaint. There is a conflict with the EEOC laws and the lower courts application of these laws.

REASONS FOR GRANTING THE PETITION

This case is an exceptionally important case for federal Title VII EEOC laws that have already been settled by this Court. The district and circuit courts did not consider any of the clear factual evidence contained within this civil action in favor of the petitioner. The lower courts only considered the respondent's and its agents self serving affidavits done in pretext in dismissing this case The district court judgment should be vacated and the case remanded for a jury trial on the basis of this Court's 2006 *Burlington v. White decision* and the evidence presented In this case a change in legal standards did occur.